

IN THE SENATE

SENATE BILL NO. 1303

BY TRANSPORTATION COMMITTEE

AN ACT

RELATING TO EMINENT DOMAIN; AMENDING SECTION 7-711A, IDAHO CODE, TO REVISE
PROVISIONS RELATING TO DELIVERY OF A FORM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 7-711A, Idaho Code, be, and the same is hereby
amended to read as follows:

7-711A. ADVICE OF RIGHTS FORM -- RIGHTS WHEN CONDEMNING AUTHORITY AC-
QUIRES PROPERTY. Whenever a state or local unit of government or a public
utility is beginning negotiations to acquire a parcel of real property in fee
simple, the condemning authority shall provide the owner of the property a
form containing a summary of the rights of an owner of property to be acquired
under this chapter. If the condemning authority does not supply the owner of
the real property with this form, there will be a presumption that any sale or
contract entered into between the condemning authority and the owner was not
voluntary and the condemning authority may be held responsible for such re-
lief, if any, as the court may determine to be appropriate considering all of
the facts and circumstances. The form shall contain substantially the fol-
lowing:

(1) The (name of entity allowed to use eminent domain proceedings pur-
suant to chapter 7, title 7, Idaho Code) has the power under the constitution
and the laws of the state of Idaho and the United States to take private prop-
erty for public use. This power is generally referred to as the power of "em-
inent domain" or condemnation. The power can only be exercised when:

- (a) The property is needed for a public use authorized by Idaho law;
- (b) The taking of the property is necessary to such use;
- (c) The taking must be located in the manner which will be most compati-
ble with the greatest public good and the least private injury.

(2) The condemning authority must negotiate with the property owner in
good faith to purchase the property sought to be taken and/or to settle with
the owner for any other damages which might result to the remainder of the
owner's property.

(3) The owner of private property to be acquired by the condemning au-
thority is entitled to be paid for any diminution in the value of the owner's
remaining property which is caused by the taking and the use of the property
taken proposed by the condemning authority. This compensation, called "sev-
erance damages," is generally measured by comparing the value of the prop-
erty before the taking and the value of the property after the taking. Dam-
ages are assessed according to Idaho Code.

(4) The value of the property to be taken is to be determined based upon
the highest and best use of the property.

1 (5) If the negotiations to purchase the property and settle damages are
2 unsuccessful, the property owner is entitled to assessment of damages from a
3 court, jury or referee as provided by Idaho law.

4 (6) The owner has the right to consult with an appraiser of the owner's
5 choosing at any time during the acquisition process at the owner's cost and
6 expense.

7 (7) The condemning authority shall deliver to the owner, upon request,
8 a copy of all appraisal reports concerning the owner's property prepared by
9 the condemning authority. Once a complaint for condemnation is filed, the
10 Idaho rules of civil procedure control the disclosure of appraisals.

11 (8) The owner has the right to consult with an attorney at any time
12 during the acquisition process. In cases in which the condemning authority
13 condemns property and the owner is able to establish that just compensation
14 exceeds the last amount timely offered by the condemning authority by ten
15 percent (10%) or more, the condemning authority may be required to pay the
16 owner's reasonable costs and attorney's fees. The court will make the deter-
17 mination whether costs and fees will be awarded.

18 (9) The form contemplated by this section shall be deemed delivered by
19 United States certified mail, postage prepaid, addressed to the person or
20 persons shown in the official records of the county assessor as the owner of
21 the property or if hand delivered to such person who acknowledges receipt of
22 the form in writing. A second copy will be attached to the appraisal at the
23 time it is delivered to the owner.

24 (10) If a condemning authority desires to acquire property pursuant to
25 this chapter, the condemning authority or any of its agents or employees
26 shall not give the owner any timing deadline as to when the owner must respond
27 to the initial offer which is less than thirty (30) days. A violation of
28 the provisions of this subsection shall render any action pursuant to this
29 chapter null and void.

30 (11) Nothing in this section changes the assessment of damages set forth
31 in section 7-711, Idaho Code.